Minneapolis Printing and Graphic Communications Union, Local 20 *and* Johnson Printing Company, Inc. and Graphic Arts International Union, Local 1B, Twin Cities.[1] Case 18-CD-269

May 10, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

This a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Johnson Printing Company, Inc. (hereinafter the Employer), alleging that Minneapolis Printing and Graphic Communications Union, Local 20 (hereinafter the Pressmen), violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to continue assigning certain work to employees represented by it rather than to employees represented by Graphic Arts International Union, Local 1B, Twin Cities (hereinafter the Bookbinders).

Pursuant to notice, a hearing was held before Hearing Officer Frank E. Kapsch, Jr., on September 16, 1981. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer, the Pressmen, and the Bookbinders filed briefs, which have been duly considered.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that Johnson Printing Company, Inc., a Minnesota corporation with its principal place of business in Minneapolis, Minnesota, is engaged in commercial printing and packaging. During the past 12 months, the Employer, in the course and conduct of its business operations, shipped from its Minneapolis, Minnesota, facility goods and materials valued in excess of $50,000 directly to customers located outside the State of Minnesota.

Based on the foregoing, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that both the Pressmen and the Bookbinders are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer's business operations are divided about equally between manufacturing folding cartons and printing books, catalogues, business papers, letterheads, and advertising folders. Employees represented by the Pressmen and the Bookbinders work as a composite crew in producing folding cartons. During this process, employees represented by the Pressmen set up and operate die-cutting presses, platen presses, gluer-folder machines, and a roller coater. The Employer has assigned the work of removing and stacking the finished products of all these machines, except the roller coater, to employees represented by the Bookbinders.

In March 1981,[2] the Employer expanded its packaging operations by purchasing a Brown 2025 Thermo-Former machine. The thermo-former produces molded plastic trays in which to package such objects as pen and pencil sets and cigarette lighters. When this machine commences its production cycle, the operator feeds sheets of rolled plastic into the thermo-former's heating element. The machine places the plastic on a mold and applies vacuum pressure to stretch the heated material into its desired shape. The operator then forms the perimeter of the plastic box using the machine's die-cutting press. Finally, the machine ejects the finished product into a receiving station for removal by another employee.

In July, the Employer installed at its facility a Finester Windowing Machine, Model D, which places a cellophane or acetate window on a folding carton. To accomplish this task, the operator initially puts a carton containing a precut window on the machine's automatic feeder. The carton is fed to a type of letter press which applies an adhesive around the window area. During the next step in this process, the windowing machine places a cellophane square on the carton and then exerts pres-

[1] The name appears as amended at the hearing.

[2] All dates are in 1981, unless otherwise indicated.

sure to ensure that the cellophane adheres to the surface. A second employee subsequently removes the finished product from the machine.

Consistent with its practice regarding the operation of other packaging machines, the Employer has assigned the production work on each machine to a composite crew of one employee represented by the Pressmen and one or more employees represented by the Bookbinders. Employees represented by the Pressmen are totally responsible for the setup and operation of these machines during production runs. When the machines have concluded their production cycle, employees represented by the Bookbinders remove the finished products and inspect them for defects.

While the Pressmen expressed no disagreement with the Employer's work assignments, the Bookbinders claimed jurisdiction over the work presently performed by the pressmen. The Bookbinders thus filed a grievance allegedly to enforce the provisions of its collective-bargaining agreement with the Employer. Thereafter, on August 7, Jess March, the Pressmen business representative, sent a letter to the Employer stating that the Pressmen would cause a work stoppage if the Employer reassigned the operation of the thermo-former or the windowing machine to employees represented by the Bookbinders.

B. *The Work in Dispute*

The work in dispute, as described in the notice of hearing, involves the operation of (1) the Brown 2025 Thermo-Former Machine and (2) the Finester Windowing Machine, Model D, at the Employer's facility in Minneapolis, Minnesota.

C. *Contentions of the Parties*

The Employer contends that the Pressmen violated Section 8(b)(4)(D) of the Act by threatening to engage in a work stoppage if it reassigned the disputed work to employees represented by the Bookbinders. Additionally, the Employer urges that its assignment of the disputed work to employees represented by the Pressmen should be upheld in view of their skills, efficiency and economy of operations, industry practice, company practice, job impact, the contract between the Employer and the Pressmen, and the Employer's assignment of the work. The Pressmen also contends that such work should be awarded to employees it represents for these reasons.

The Bookbinders argues that its contract with the Employer, industry and area practice, relative skills, and efficiency and economy of operations favor an award of the disputed work to employees it represents.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and (2) there is no agreed-upon method for the voluntary resolution of the dispute.

With respect to (1), above, it is uncontested that in a letter dated August 7, 1981, Jess March, the Pressmen business representative, informed the Employer that "[i]f you assign the [disputed] work that the Bindery Union Local 1B has been demanding that they receive, our Local will have no other recourse than to strike Johnson Printing Company." This threat to strike clearly constitutes a threat of serious economic harm and is coupled with the stated intention of forcing the Employer to continue assigning certain work to employees represented by the Pressmen rather than to employees represented by the Bookbinders. We therefore find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

With respect to (2), above, there is no evidence in the record and no party otherwise contends that there is an agreed-upon method for the voluntary resolution of the dispute. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of the disputed work after giving due consideration to various relevant factors.[3] As the Board has frequently stated, the determination in a jurisdictional dispute case is an act of judgment based on commonsense and experience in weighing these factors. The following factors are relevant in making a determination of the dispute before us.

1. Board certification and relevant collective-bargaining agreements

There is no evidence that either of the labor organizations involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees.

It is clear that neither Union's existing collective-bargaining agreement with the Employer specifically mentions operation of the Brown 2025 Thermo-Former Machine or the Finester Window-

[3] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961); *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

ing Machine, Model D. The record also contains no evidence that the parties contemplated the Employer's purchase of these machines when they negotiated the respective contracts. Nevertheless, the Employer and the Pressmen argue that their agreement covers the disputed work, while the Bookbinders raises a similar contention concerning its contract with the Employer.

Section 2(a) of the Bookbinders contract provides that "[a]ll employees engaged in bindery department production work and work incidental and supplemental thereto including shipping room shall be covered by this agreement." We find that this provision is vague with respect to the issues before us and thus provides no assistance in determining the instant dispute.

The work jurisdiction of employees represented by Pressmen is defined in Section 2(a) of the contract between the Employer and the Pressmen as follows:

> This contract applies to pressrooms operated by the Employer . . . including but not limited to letterpresses, all offset presses, all gravure presses, all analine presses, all presses of a specialty nature used for scoring, die-cutting, perforating or cornering, all heat-set presses . . . all proofing and all miscellaneous pressroom employees . . . . Nothing in this clause shall be construed to apply to employees or work which is now covered by contracts with any other union.

While the Employer and the Pressmen point out that "die-cutting" is an integral function involved in operating the thermo-former, we are not convinced that the quoted provision is sufficiently broad so as to cover this work. They further assert that the windowing machine falls within the Pressmen's jurisdiction clause because it constitutes a press "of a specialty nature." It does not appear from the record, however, that the machine is "used for scoring, die-cutting, perforating or cornering." Thus, we conclude that the Pressmen's contract does not specifically cover operation of the windowing machine.

Accordingly, we conclude that the factors of Board certification and relevant collective-bargaining agreements are inconclusive and do not favor an award of the disputed work to either group of employees.

2. Relative skills and efficiency and economy of operations

The Employer argues for an award of the disputed work to employees represented by the Pressmen because of their experience in performing work similar to that in dispute here and the resulting efficiency and economy of operations. The record discloses that it is essential for the thermo-former operator to possess die-cutting skills such as employees represented by the Pressmen have acquired in operating the Employer's other die-cutting presses. With respect to windowing machine operations, there is evidence that the pressmen perform similar tasks when they produce a finished carton from precut cardboard blanks on the gluer-folder machine. Furthermore, the employee represented by the Pressmen who has been assigned this work previously operated windowing machines for other employers. In view of the foregoing, it is clear that employees represented by the Pressmen have demonstrated the skills required to perform all the disputed work. By contrast, the record contains no evidence that any of the Employer's employees represented by the Bookbinders has experience in operating packaging machines.

Accordingly, we find that the factors of relative skills and efficiency and economy of operations favor an award of the disputed work to employees represented by the Pressmen.

3. Area practice

The Employer established that Mankato Carton Company, located about 85 miles from the Employer's facility, has assigned the entire operation of an identical thermo-former machine to employees represented by the Pressmen. There is no evidence, however, that Mankato Carton also employs employees represented by the Bookbinders. The record also discloses that Brown & Bigelow Company of Minneapolis has assigned the operation of "two vacuum-forming machines" to employees represented by the Bookbinders rather than to its Pressmen-represented employees. It is clear, however, that this type of thermo-former is dissimilar to the Employer's machine since it does not perform any die-cutting operations. We therefore conclude that area practice regarding the thermo-former is inconclusive and does not favor an award of this work to either group of employees.

With respect to the windowing machine, the Bookbinders presented evidence that three Minneapolis companies utilize employees represented by the Bookbinders, rather than their Pressmen-represented employees, to operate machines which insert a cellophane window on paper envelopes. None of these companies, however, is engaged in manufacturing folding cartons. In these circumstances, we find that area practice relative to the windowing machine does not favor an award of such work to either group of employees.

4. Employer's assignment and past practice

The Employer has assigned all the work in dispute to employees represented by the Pressmen and has expressed its preference that such work be performed by those employees. The Board has held that where an employer institutes a new production process, "company practice" regarding a work assignment will be determined by comparing the nature of the tasks involved in the new process to the work traditionally performed by competing groups of employees.[4] It is undisputed that the Employer consistently has assigned the setup and operation of die-cutting presses, platen presses, gluer-folder machines, and the roller coater utilized in producing folding cartons to employees represented by the Pressmen. We have noted that the tasks such employees perform in operating these machines are closely analogous to those involved in the disputed work. The Employer's Bookbinders-represented employees, by contrast, traditionally have been responsible only for handling the finished products of packaging machines. They presently are performing this function on the thermoformer and windowing machine under the Employer's work assignment.

In view of the foregoing, we find that the Employer's present assignment and past practice favor an award of the disputed work to employees represented by the Pressmen.

5. Job impact

The Employer and the Pressmen contend that an award of the disputed work to employees other than those represented by the Pressmen will result in the elimination of jobs for employees represented by the Pressmen. Contrary to their argument, the evidence discloses that the Employer did not hire any new employees when it commenced operations on the newly installed machines. Furthermore, the Employer presently is not utilizing either machine at full capacity. When its projected expansion of these operations occurs, the Employer anticipates hiring additional employees regardless of which employee group is awarded the disputed work. Thus, under the circumstances present here, it appears that the Employer would not dismiss any of its present Pressmen-represented employees if the disputed work is awarded to employees represented by the Bookbinders.

Accordingly, we find that this factor does not favor an award of the disputed work to either group of employees.

Conclusion

Upon the record as a whole, and after full consideration of all the relevant factors involved, we conclude that the Employer's employees who are represented by Minneapolis Printing and Graphic Communications Union, Local 20, are entitled to perform all the work in dispute. We reach this conclusion based on the Employer's present assignment and past practice, relative skills, efficiency and economy of operations, and the similarity of the disputed work to the tasks that employees represented by Pressmen previously have performed for the Employer. Accordingly, we shall determine the instant dispute by awarding all the disputed work to employees represented by Minneapolis Printing and Graphic Communications Union, Local 20, but not to that Union or its members. The scope of our award is limited to the facts of the instant dispute.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of Johnson Printing Company, Inc., who are represented by Minneapolis Printing and Graphic Communications Union, Local 20, are entitled to perform the work involved in operating the Brown 2025 Thermo-Former Machine and the Finester Windowing Machine, Model D, at the Employer's facility located in Minneapolis, Minnesota.

[4] *Paper Handlers' and Sheet Straighteners' Union Local No. 1, International Printing & Graphic Communications Union, AFL-CIO (American Bank Note Company)*, 255 NLRB 261 (1981).